



## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

**[Docket No. TTB-2020-0005; T.D. TTB-168; Ref: Notice No. 190]**

**RIN: 1513-AC60**

### **Establishment of The Burn of Columbia Valley Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 16,870-acre “The Burn of Columbia Valley” viticultural area in Klickitat County, Washington. The newly-established The Burn of Columbia Valley viticultural area is located entirely within the existing Columbia Valley viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202-453-1039, ext. 175.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background on Viticultural Areas**

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

### *Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

### *Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that

make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;

- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition;

- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and

- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

### **The Burn of Columbia Valley Petition**

TTB received a petition from Kevin Corliss, Vice President of Vineyards for Ste. Michelle Wine Estates, Joan R. Davenport, Professor of Soil Sciences at Washington State University, and John Derrick, Vice President of Operations for Mercer Ranches, Inc., proposing to establish “The Burn of Columbia Valley” AVA. The proposed AVA is located in Klickitat County, Washington, and lies entirely within the established Columbia Valley AVA (27 CFR 9.74). Within the 16,870-acre proposed AVA, there are 3 commercial vineyards, which cover a total of approximately 1,261 acres and are owned by two different entities. The distinguishing features of the proposed The Burn of Columbia Valley AVA are its soils, climate, and topography.

The soils of the proposed The Burn of Columbia Valley are primarily silty loams in the taxonomic order Mollisols. The soils are described as having good plant-available water holding capacity that are capable of delivering sufficient

water to the vines during the growing season. The soils are also relatively high in organic material and provide adequate nutrients, particularly nitrogen, to the vines. The most common soil series and complexes in the proposed AVA are Walla Walla silt loam (without cemented substratum), Rock outcrop–Haploxeroll complex, Haploxeroll–Fluvaquent complex, Fluventic Haploxeroll–Riverwash complex, Rock outcrop Rubble and Complex, Wato silt loam, Walla Walla silt loam (with cemented substratum), Endicott silt loam, and Endicott–Moxee complex.

The climate within the proposed The Burn of Columbia Valley AVA is characterized by an average annual growing degree day<sup>1</sup> (GDD) accumulation of 2,763 GDDs, with a minimum of 2,405 GDDs and a maximum of 3,249 GDDs. The average annual GDD accumulations favor the production of grape varieties with higher heat unit requirements, such as Cabernet Sauvignon and Syrah, which are the two most commonly grown grape varieties within the proposed AVA. The proposed AVA receives an average of 8.76 inches of precipitation annually, with a minimum of 6.65 inches and a maximum of 10.44 inches. Low annual rainfall amounts mean that vineyards within the proposed AVA require supplemental irrigation.

The topography of the proposed The Burn of Columbia Valley AVA is comprised of gently sloping bench lands above the Columbia River. The average slope angle within the proposed AVA is 7.27 percent, which is suitable for mechanical cultivation of vineyards, yet is steep enough to avoid the pooling of cold air that could damage grapes. The proposed AVA also has a large,

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<sup>1</sup> See Albert J. Winkler et al., *General Viticulture* (Berkeley: University of California Press, 2nd. ed. 1974), pages 61–64. In the Winkler scale, the GDD regions are defined as follows: Region I = less than 2,500 GDDs; Region II = 2,501–3,000 GDDs; Region III = 3,001–3,500 GDDs; Region IV = 3,501–4,000 GDDs; Region V = greater than 4,000 GDDs.

contiguous expanse of land with easterly and southern aspects, as well as a southeasterly aspect, which allows excellent sunlight exposure for vineyards.

To the east-northeast and northwest of the proposed AVA, the soils include series and complexes that are not present within the proposed AVA, including the Renslow–Ralls–Whipple complex, Van Nostern silt loam, Van Nostern–Bakeoven complex, Colockum–Cheviot complex, Swalecreek–Rockley complex, and Goldendale silt loam. Average annual GDD accumulations to the east-northeast and northwest of the proposed AVA are lower, and average annual rainfall amounts are higher than within the proposed AVA. In the region to the south of the proposed AVA, the soils contain series and complexes also not present within the proposed AVA, including Ritzville silt loam, Willis silt loam, and Roloff–Rock outcrop complex. Average annual GDD accumulations are higher in the region south of the proposed AVA, as are average annual precipitation amounts. Additionally, in the region to the west of the proposed AVA, the soils contain complexes not present within the proposed AVA, including the Cheviot–Tronsen complex, Goodnoe–Swalecreek–Horseflat complex, and Asotin silt loam. The region to the west of the proposed AVA has lower annual GDD accumulations and higher average annual rainfall amounts. When compared to the proposed The Burn of Columbia Valley AVA, each of the surrounding regions has higher average slope angles except the region to the south, which has lower average slope angles.

### **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 190 in the **Federal Register** on May 27, 2020 (85 FR 31718), proposing to establish The Burn of Columbia Valley AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also

compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 190.

In Notice No. 190, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed The Burn of Columbia Valley AVA's location within the Columbia Valley AVA, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the established AVA. TTB also requested comments on whether the geographic features of the proposed AVA are so distinguishable from the established Columbia Valley AVA that the proposed AVA should no longer be part of the established AVA. The comment period closed July 27, 2020.

In response to Notice No. 190, TTB received 13 comments. The commenters included local wine industry members, local wine consumers, the Goldendale Chamber of Commerce, the Klickitat County Natural Resources & Economic Development Department, and the Columbia–Snake Rivers Irrigators Association. Eleven of the comments support creating the proposed The Burn of Columbia Valley AVA so as to distinguish this region from other areas within the established Columbia Valley AVA. One of the comments (comment 12) did not specifically express support for or opposition to the proposed AVA, but did state that the geography and climate of the proposed The Burn of Columbia Valley AVA are “significantly different than the existing Columbia Valley AVA.” Only one comment (comment 13), submitted by an anonymous commenter, opposed

establishing the proposed AVA. The commenter stated their belief that the proposed The Burn of Columbia Valley AVA was not sufficiently distinguishable from the nearby established Horse Heaven Hills AVA (27 CFR 9.188) and should be included in that AVA instead of recognized as a new AVA. However, the comment did not include any evidence to support this claim.

### **TTB Determination**

After careful review of the petition and the comments received in response to Notice No. 190, TTB finds that the evidence provided by the petitioner supports the establishment of The Burn of Columbia Valley AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the “The Burn of Columbia Valley” AVA in Klickitat County, Washington, effective 30 days from the publication date of this document.

TTB has also determined that The Burn of Columbia Valley AVA will remain part of the established Columbia Valley AVA. As discussed in Notice No. 190, The Burn of Columbia Valley AVA shares some broad characteristics with the established AVA. For example, the proposed AVA and the Columbia Valley AVA both have similar average annual rainfall amounts. However, the proposed AVA can accumulate maximum GDDs of over 3,000 annually, indicating a climate that is slightly warmer than the rest of the much larger Columbia Valley AVA. Additionally, because the proposed The Burn of Columbia Valley AVA is much smaller than the Columbia Valley AVA, the proposed AVA has a greater uniformity of characteristics within its boundaries.

### **Boundary Description**

See the narrative description of the boundary of The Burn of Columbia Valley AVA in the regulatory text published at the end of this final rule.



## **Maps**

The petitioners provided the required maps, and they are listed below in the regulatory text. The Burn of Columbia Valley AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at <https://www.ttb.gov/wine/ava-map-explorer>.

## **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of The Burn of Columbia Valley AVA, its name, "The Burn of Columbia Valley," will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name "The Burn of Columbia Valley" in a brand name, including a trademark, or

in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

TTB is not designating “The Burn,” standing alone, as a term of viticultural significance because the term “The Burn” is used to refer to multiple areas in the United States. Therefore, wine bottlers using “The Burn,” standing alone, in a brand name or in another label reference on their wines will not be affected by the establishment of this AVA.

The establishment of The Burn of Columbia Valley AVA will not affect the existing Columbia Valley AVA, and any bottlers using “Columbia Valley” as an appellation of origin or in a brand name for wines made from grapes grown within the Columbia Valley will not be affected by the establishment of this new AVA. The establishment of The Burn of Columbia Valley AVA will allow vintners to use “The Burn of Columbia Valley” and “Columbia Valley” as appellations of origin for wines made primarily from grapes grown within The Burn of Columbia Valley AVA if the wines meet the eligibility requirements for these appellations.

### **Regulatory Flexibility Act**

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

### **Executive Order 12866**

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

## **Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

## **List of Subjects in 27 CFR Part 9**

Wine.

## **The Regulatory Amendment**

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

### **PART 9—AMERICAN VITICULTURAL AREAS**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### **Subpart C—Approved American Viticultural Areas**

2. Subpart C is amended by adding § 9.276 to read as follows:

#### **§ 9.276 The Burn of Columbia Valley.**

(a) *Name*. The name of the viticultural area described in this section is “The Burn of Columbia Valley”. For purposes of part 4 of this chapter, “The Burn of Columbia Valley” is a term of viticultural significance.

(b) *Approved maps*. The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of The Burn of Columbia Valley viticultural area are titled:

- (1) Sundale NW, OR–WA, 2017;
- (2) Goodnoe Hills, WA, 2017;
- (3) Dot, WA, 2017; and
- (4) Sundale, WA–OR, 2017.

(c) *Boundary*. The Burn of Columbia Valley viticultural area is located in Klickitat County in Washington. The boundary of The Burn of Columbia Valley viticultural area is as described below:

(1) The beginning point is on the Sundale NW map, at the intersection of the Columbia River and the east shore of Paterson Slough. From the beginning point, proceed northerly along the east shore of Paterson Slough to its junction with Rock Creek, and continuing northeasterly along Rock Creek to its intersection with the boundary of the Yakima Nation Trust Land; then

(2) Proceed south, then east, then generally northeasterly along the boundary of the Yakima Nation Trust Land, crossing onto the Goodnoe Hills map, to the intersection of the Trust Land boundary with Kelley Road; then

(3) Proceed north in a straight line to the intersection with the main channel of Chapman Creek; then

(4) Proceed southeasterly (downstream) along Chapman Creek, crossing over the Dot map and onto the Sundale map, to the intersection of Chapman Creek with its southernmost tributary; then

(5) Proceed due east in a straight line to the creek running through Old Lady Canyon; then

(6) Proceed southerly along the creek to its intersection with the northern shoreline of the Columbia River; then

(7) Proceed westerly along the northern shoreline of the Columbia River, returning to the beginning point.

Signed: January 4, 2021.

**Mary G. Ryan,**

*Administrator.*

Approved: January 5, 2021.

**Timothy E. Skud,**

*Deputy Assistant Secretary  
(Tax, Trade, and Tariff Policy).*

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